

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition
of
MICHELE BECTON

DETERMINATION
DTA NO. 830246

for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2018.

Petitioner, Michele Becton, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2018.

A videoconferencing hearing via Cisco Webex was held before Kevin R. Law, Administrative Law Judge, on November 9, 2022, with all briefs to be submitted by March 3, 2023, which date commenced the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

ISSUE

Whether petitioner met her burden of establishing her entitlement to the earned income credit and the Empire State child credit for the year 2018.

FINDINGS OF FACT

1. On or about April 14, 2019, petitioner, Michele Becton, filed a 2018 New York State resident income tax return, form IT-201 (2018 return), on which she claimed two children, ages fifteen and seventeen as of December 31, 2018, as dependents. On this return, petitioner reported \$16,121.00 of earnings from self-employment. Attached to the return is a schedule C

for petitioner that reports gross receipts of \$17,721.00 and claims expenses of \$1,600.00, resulting in a gross profit of \$16,121.00. The principal business activity listed on the schedule C is Childcare Provider.

2. After claiming the standard deduction on her 2018 return, petitioner reported taxable income of \$1,782.00, New York State tax of \$71.00, claimed a New York State earned income credit of \$1,644.00 and an Empire State child credit of \$330.00.

3. On May 4, 2019, the Division of Taxation (Division) issued to petitioner a refund of \$1,974.00 as claimed on her 2018 return.

4. On December 5, 2019, the Division sent petitioner an audit inquiry letter requesting verification of the dependents claimed on her 2018 return and verification of the income reported on the return. The record does not indicate whether petitioner failed to respond to the December 5, 2019 audit inquiry letter or whether she responded and the Division found petitioner's response to be inadequate.

5. On October 8, 2020, the Division issued a statement of proposed audit changes to petitioner that asserted tax of \$2,065.00 plus interest, representing a disallowance of the credits claimed as well as a disallowance of the two dependents claimed by petitioner on her 2018 return. Although the Division has taken the position that petitioner failed to substantiate her income reported on her 2018 return for purposes of the earned income, the statement of proposed audit changes asserts tax of \$91.00 on her reported income.

6. On December 14, 2020, the Division issued a notice of deficiency, notice number L-052285519, asserting tax of \$2,065.00, plus interest.

7. At the hearing, petitioner testified that she braided hair and was not a child care provider and was not certain why her tax preparer indicated the latter. She did not submit any

proof of income during 2018 or documentation to verify her claimed dependents. The hearing record was left open for petitioner to submit same but she failed to do so. In its brief in opposition to the petition, the Division indicated that it had received documentation from petitioner subsequent to the hearing wherein petitioner substantiated one dependent claimed, but not the other. The Division also indicated in its brief that petitioner failed to submit documentation substantiating her income.

CONCLUSIONS OF LAW

A. Tax Law § 606 (d) (1) provides for a New York State earned income credit based on a percentage of the earned income credit allowed under the Internal Revenue Code (IRC) (26 USC) § 32. Since the New York State earned income credit is determined based solely upon a percentage of the federal credit, it is appropriate to refer to the provisions of the IRC to determine petitioner's eligibility for the earned income credit (*see Matter of Espada*, Tax Appeals Tribunal, January 28, 2016).

The federal earned income credit, provided for pursuant to IRC (26 USC) § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based on a determination of a taxpayer's "earned income," which includes earnings from self-employment (*see* IRC [26 USC] § 32 [c] [2] (A) [ii]). Thus, the New York State earned income credit requires petitioner to prove the amount of her earned income (*see Matter of Espada*).

B. Petitioner bears the burden of proof to show a clear entitlement to the tax credits at issue (*see Matter of Golub Serv. Sta. v Tax Appeals Trib. of State of N.Y.*, 181 AD2d 216, 219 [3d Dept 1992]; *see also* Tax Law § 689 [e]). Without sufficient documentation to substantiate the claimed business income for the year at issue, petitioner fails to meet her burden of proof and is not entitled to the earned income credit for 2018 (*see Matter of Espada*).

C. Here, the Division denied petitioner's claim for the earned income credit for 2018 because she failed to substantiate her business income as reported. Upon review of the record, it is clear that petitioner failed to prove her income for the year in issue.

D. Turning next to petitioner's claimed Empire State child credit for 2018, the Division conceded that petitioner substantiated one of her two claimed dependents and is therefore allowed the minimum credit of \$100.00. Tax Law § 606 (c-1) (1) provides for a credit equal to the greater of one hundred dollars times the number of qualifying children of the taxpayer or the applicable percentage of the child tax credit allowed the taxpayer under IRC (26 USC) for the same taxable year for each qualifying child. Where the taxpayer does not have any earned income, the taxpayer will not qualify for the child tax credit under IRC (26 USC) former § 24 (d) (1) (B) (i). Thus, petitioner is only entitled to a credit of \$100.00, based upon one qualifying child with no verifiable income (*see* Tax Law § 606 [c-1] [1]).

E. The petition of Michele Becton is denied, and the December 14, 2020 notice of deficiency, as modified by conclusion of law D, is sustained.

DATED: Albany, New York
August 31, 2023

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE